

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15327 2005

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ORDER:

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This writ petition is filed seeking a declaration that the alleged action of the respondents in not restoring the power supply to the agricultural Service Connection No.4/5, belonging to the petitioner, situated in A.V. Nagaram, Gollaprolu Mandal, East Godavari District, as arbitrary and illegal.

Subsequently, having regard to the stand taken by the respondents in the counter-affidavit that the agreement in favour of the petitioner stood terminated with effect from 16.01.2004, the petitioner got the prayer in the writ petition amended by adding a further declaration that the alleged termination of the contract without issuing any notice as arbitrary and illegal.

The petitioner states that he is a small farmer, owning a small extent of land admeasuring Ac.2-00 cents, situated in A.V. Nagaram of Gollaprolu Mandal. Since the said land is being irrigated with bore water, he obtained L.T. power supply connection, which was released by the respondents under Service Connection No.4/5. He was drawing water by operating a pump set on payment of consumption charges regularly. While so, in the year 2002, the pump set was damaged, and consequently, he could not pay consumption charges for some time, as a result of which, the respondents disconnected the power supply. He was not aware of the disconnection since the bore-well was not in service. In the year 2003, he came to know about the disconnection, and immediately, he approached the concerned authorities with a request to restore the power supply, who advised him to pay a sum of Rs.10,139/-. Since he was not able to pay the said amount, he made a representation to the 3rd respondents-Divisional Engineer, Operation, Kakinada, requesting to waive the interest and also permit him to pay the amount in instalments. The 3rd respondents having considered the same, made an endorsement on 28th March, 2003, as under:

“Keep the LP amount aside. Collect Rs.5,758-50 Ps and issue reconnection.”

The petitioner states that he paid the said amount of Rs.5,758/- on 28.03.2003. However, the respondents failed to restore the power supply. Aggrieved by the said action, this writ petition is filed contending that since he paid the amount as directed by the 3rd respondent, the respondents 1 and 2 are not justified in not restoring the power supply. It is also contended that the action of the respondents in disconnecting the power supply is not in conformity with the provisions of Section 56 of the Electricity Act, 2003.

On behalf of the respondents, the 4th respondents-Assistant Divisional Engineer, Operation, Pithapuram, filed a counter-affidavit, stating that the service connection of the petitioner was restored after the petitioner paid the amount as directed by the 3rd respondent. However the petitioner was informed that the remaining balance has to be paid in the next instalment, and since the petitioner failed to pay the said amount, the service connection was again disconnected on 2.09.2003. It is also stated that the plea of the petitioner that as per the endorsement of the 3rd respondents he is not liable to pay any further amount is not correct. As a matter of fact, the petitioner was informed to remit the balance amount in the next month. On 17.12.2003 a notice was given to the petitioner to pay the arrears and get the service connection regularized, in default the agreement will be deemed to have terminated. In spite of the same, the petitioner did not come forward to regularize the service connection by paying the arrears within the period as stipulated in the notice. Hence, the agreement was terminated with effect from 16.01.2004. In the circumstances, the power supply cannot be restored and the only course available to the petitioner is to make a fresh application for availing the service connection, in which event, the petitioner will be provided with the power supply, subject to completing the required formalities and availability of the quota allotted to that particular area.

The petitioner filed an affidavit in reply, categorically denying the plea of the respondents that the petitioner was informed about the disconnection. It is also pleaded that even before the disconnection, he was never put on notice. It is also stated that there was no restoration of the power supply after the amount was paid by him and the plea of the respondents that the power supply was restored initially, and again disconnected on 2.09.2003 is only an afterthought, and is invented to get over the contempt proceedings initiated against the respondents.

I have heard the learned counsel for the petitioner and the learned Standing

Counsel appearing for the respondents.

It is to be noted that under Section 56 of the Electricity Act, 2003, if any person neglects to pay any charges for electricity, it is open to the respondents-Company to cut-off the supply of electricity after giving not less than fifteen clear days notice in writing. In the case on hand, the specific plea of the writ petitioner is that such a notice was never issued by the respondents before disconnecting the power supply on the ground of alleged default in payment of consumption charges. On the other hand, the respondents claim that the petitioner was served with a notice dated 17.12.2003. A copy of the said notice which has been placed before this Court shows that it is only a notice under Clause 26.10 of the Terms and Conditions of Supply issued under B.P.Ms.No.953 dated 26.11.2976 as amended by B.P.Ms.No.151 dated 25.08.1993, calling upon the petitioner to show cause as to why the agreement should not be terminated. However, nothing has been placed before this Court by the respondents to show that the petitioner was served with any notice before disconnecting the supply of electricity either in the year 2002 or on 2.09.2003 on the ground that he failed to pay the consumption charges. As a matter of fact, the specific case of the writ petitioner is that in spite of the fact that he paid the amount of Rs.5,758/-, as directed by the 3rd respondent on 28.03.2003 itself, the respondents failed to restore the power supply and the version of the respondents that the power supply was restored and again it was disconnected on 2.09.2003 is absolutely false and without any basis. In the absence of any material to substantiate the version of the respondents, their plea that power supply was initially restored and again disconnected on 2.09.2003, does not appear to be genuine. Be that as it may, as expressed above, the petitioner was never put on notice before disconnecting the power supply, which is in clear violation of the mandatory requirement under Section 56 of the Electricity Act, 2003.

However, the learned counsel for the respondents submits that since the petitioner failed to pay the dues and regularize his service connection within three months from the date of disconnection, the agreement in favour of the petitioner was also terminated in terms of Clause 26.10 of the Terms and Conditions of Supply. Though a copy of the show cause notice said to have been issued by the respondents dated 17.12.2003 under Clause 26.10 of the Terms and Conditions of Supply has been placed before this Court, the respondents could not produce any material to establish that the said notice was actually served on the petitioner. It is

also relevant to note that the respondents though pleaded that a show cause notice was issued as long back as on 17.12.2003 and subsequently the agreement stood terminated with effect from 16.01.2004, strangely, proceedings were issued by the Assistant Accounts Officer, Samalkota, after an year on 11.01.2005 informing the *factum* of termination to the 3rd respondent. Even a copy of the said intimation was not marked to the petitioner. In the circumstances, I find force in the contention of the learned counsel for the petitioner that the alleged termination of the agreement is illegal. At any rate, as already expressed above, since the disconnection of the power supply itself, being in violation of the provisions of Section 56 of the Electricity Act, 2003, is illegal, the consequential action of the respondents in terminating the agreement is equally unsustainable and liable to be set aside.

So far as the arrears of consumption charges payable by the petitioner are concerned, the petitioner pleads that he was orally informed by the officials of the respondent-Corporation that a sum of Rs.10,135/- was due. On the basis of the representation made by the petitioner, the 3rd respondent, except making an endorsement to restore the power supply on payment of Rs.5,758.50 Ps., did not pass any final order with regard to the request made by the petitioner for waiving the interest or permitting him to pay the amount in instalments. No other order has been placed before this Court by the respondents to show that there was any determination as to the liability of the petitioner towards the arrears of consumption charges. Though the learned counsel for the petitioner contended that except Rs.5,758.50 Ps., as directed by the 3rd respondent, the petitioner is not liable to pay anything more, I am unable to agree, since the endorsement made by the 3rd respondents on the representation of the petitioner dated 22.07.2005, cannot be taken as determination with regard to the liability of the petitioner.

Accordingly, the order of the 1st respondent dated 11.01.2005 terminating the agreement in favour of the petitioner is set aside, and the writ petition is disposed of with a direction to the respondents to inform the petitioner the arrears of the consumption charges payable by him in respect of his Service Connection No.4/5, within a period of 4 (four) weeks from the date of receipt of this order. In the meanwhile, the power supply to the petitioner's Service Connection shall be restored on payment of the balance of Rs.5,067-50 Ps., (i.e., balance of Rs.10,135/-), as ordered by this Court on 19.07.2005 in W.P.M.P.No.19477 of 2005. However, it is

made clear that such payment shall be subject to the determination that may be made by the respondents in terms of this order.

The writ petition is accordingly disposed of. No costs.

(G. ROHINI, J.)

December 9, 2005.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15327 2005

December, 2005.

Between:

Dayyala Pollayya .. Petitioner.

And

The Chairman and Managing Director,

APEPDCL., Visakhapatnam and

three others. .. Respondents.